

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

United States District Court
Southern District of Texas
ENTERED

JUN - 3 2002

Michael B. Milby, Clerk of Court

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
Plaintiff,)	6.
)	
v.)	Civil Action No. C-02-124
)	
LINDA'S CONSTRUCTION, INC.,)	
)	
Defendant.)	

CONSENT DECREE

The parties to this Consent Decree are the Plaintiff, United States Equal Employment Opportunity Commission ("EEOC"), and Defendant, Linda's Construction, Inc. ("Linda's Construction"). This Consent Decree resolves the above-referenced Civil Action No. C-02-124. The EEOC initiated this lawsuit under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq. ("Title VII"), and Title I of the Civil Rights Act of 1991, 42 U.S.C. §1981a. The Complaint was filed to correct alleged unlawful employment practices on the basis of race, Black, in violation of Section 703(a) of Title VII, and to provide appropriate relief to Anthony E. Cornell ("Cornell") who was adversely affected by such practices. The EEOC alleges that Cornell was subjected to a hostile work environment on the basis of his race, Black, in the form of racial slurs and offensive jokes during the course of his employment with Linda's Construction.

The EEOC and Linda's Construction wish to settle this action without the necessity of further litigation pursuant to the terms delineated in this Decree.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction of the subject matter of the action and the parties, venue is proper, and all administrative prerequisites to the filing of this action have been met. The Complaint states claims, which if proved, would authorize this Court to grant relief against Linda's Construction pursuant to Title VII.

2. This Decree resolves all issues raised in the EEOC's complaint in this case. The EEOC waives further litigation of all issues raised in the above-referenced complaint. The EEOC expressly reserves its right, however, to process and litigate any other charges which may now be pending or may in the future be filed against Linda's Construction.

SCOPE OF THE DECREE

3. The duration of this Decree shall be three (3) years from the date of its filing with the Court. This Court shall retain jurisdiction of this action for the duration of this Decree and may enter such other and further relief as it deems appropriate to ensure implementation and enforcement of its provisions. Any violation of the Decree by Linda's Construction, its agents or assigns, shall toll the running of this three-year period from the date of the violation. If the Court subsequently determines that this Decree was violated, the three-year period shall recommence and continue from the date of entry of an Order setting out such violation or until such time as ordered by the Court. Should the Court find this Decree was not violated, the three-year period shall recommence, retroactive to the date of the filing of the pleading alleging that a violation had occurred.

INJUNCTIVE PROVISIONS

4. Linda's Construction, its employees, officers, agents, managers, supervisors, successors, and assigns, are hereby enjoined from:

(a) Discriminating against any past, present or future employee on the basis of race in

violation of Title VII;

- (b) Engaging in or being a party to any action, policy or practice that has the effect of harassing or intimidating any employee on the basis of race; and
- (c) Creating, facilitating or permitting the existence of a work environment that is hostile to any employee on the basis of race through acts such as physical/verbal abuse and derogatory comments of which Linda's Construction is or should be aware.

5. Within forty-five (45) days after the entry of this Decree, Linda's Construction shall create and implement a written anti-discrimination policy which meets the following criteria:

- (a) Contains a provision stating that Linda's Construction (i) prohibits discrimination against employees on the basis of race; (ii) prohibits any act, policy or practice that has the effect of harassing or intimidating any employee on the basis of race; and (iii) prohibits any act, policy or practice that has the effect of creating, facilitating or permitting the existence of a work environment that is racially hostile to employees through acts such as physical/verbal abuse and derogatory comments;
- (b) Provides that discrimination complaints can be made either orally or in writing;
- (c) Provides for prompt investigation of discrimination complaints and prompt remedial action;
- (d) Provides for prompt written communication to the complaining employee upon the conclusion of its investigation the results of the investigation and the remedial actions taken or proposed action, if any;
- (e) Provides for substantial and progressive discipline of employees for violating the anti-discrimination policy, up to and including discharge; and
- (f) Requires that all employees report incidents of harassment to any supervisor or the

person charged with investigating discrimination complaints.

6. **Complaint Procedure.** Within forty-five (45) days after the entry of this Decree, Linda's Construction shall create and implement a written complaint procedure that assists employees to come forward with complaints regarding violations of its anti-discrimination policy. This complaint procedure shall provide the following:

- (a) Simple, convenient, confidential and reliable mechanisms for reporting incidents of discrimination;
- (b) Clerical assistance for complainants who are not proficient in reading and/or writing;
- (c) Prompt investigation of discrimination complaints;
- (d) Prompt written communication to the complaining employee of the results of the investigation and any remedial actions taken or proposed; and
- (e) Appropriate remedial action to resolve the complaint and deter future incidents of discrimination.

7. Within sixty (60) days after the entry of this Decree, Linda's Construction shall communicate in writing its anti-discrimination policy to all of its employees.

TRAINING

8. Within ninety (90) days after the entry of this Decree, Linda's Construction shall, at its own cost, provide annual training on the anti-discrimination laws under Title VII. This training shall meet the following criteria:

- (a) Within 30 days prior to the date scheduled for this training, Linda's Construction shall provide the EEOC a written report describing the anti-discrimination training, identifying the instructor(s) and listing his/her qualifications to conduct such training;

- (b) Within 10 days after receiving this written report describing the anti-discrimination training, the EEOC shall have the right to disapprove the training and/or the instructor(s);
- (c) Each annual training session shall last no fewer than four (4) hours in length;
- (d) The training shall explain the law relating to racial harassment under Title VII and instruct what conduct may create or contribute to a hostile work environment or make tolerance of racial harassment a term or condition of employment;
- (e) Training shall be provided to all managers, supervisors and human resources personnel; and
- (f) All training participants shall be required to sign a registry upon completion of the training.

MONETARY RELIEF

9. Linda's Construction, in settlement of this dispute, shall pay to Cornell the sum of \$22,500.00 (TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS) in certified funds or by cashier's check, within ten (10) days after entry of this Decree. Such payment shall be mailed directly to Anthony E. Cornell, 609 South Wanda, Kingsville, Texas 78363.

A copy of the settlement check and any accompanying transmittal documents shall be contemporaneously forwarded to the EEOC to the attention of Robert B. Harwin, Regional Attorney, Equal Employment Opportunity Commission, Mockingbird Plaza II, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229.

POSTING OF NOTICE

10. Defendant Linda's Construction, its agents, officers, employees, servants, successors, and assigns, shall post a notice within ten (10) days of the entry of this Decree regarding its practices,

policies, and intent not to discriminate against any employee in violation of Title VII. Such notice shall be as set forth in **Exhibit A**, which is attached to this Decree. A copy of **Exhibit A** shall be posted at Defendant's Kingsville, Texas, facility and on all employee bulletin boards or other areas where employees are likely to congregate. This notice shall remain posted for the duration of this Decree. Linda's Construction shall certify to the EEOC in writing within ten (10) business days after the posting of the Notice that the Notice has been properly posted.

COMPLIANCE

11. During the duration of this Decree, the EEOC shall have the right to ensure compliance with the terms of this Decree. In furtherance, the parties agree to the following:

- (a) Linda's Construction shall maintain and make available for inspection and copying all documents relevant to its compliance with this Decree; and
- (b) Within written notice of five (5) business days, Linda's Construction shall permit representatives of the EEOC to review relevant documents, and meet and interview all persons within its employ for purposes of verifying compliance with this Decree.

MISCELLANEOUS PROVISIONS

12. Nothing contained in this Decree shall be construed to limit any obligation Linda's Construction may otherwise have to maintain records under Title VII or any other statute.

13. Linda's Construction shall expunge Cornell's personnel file of all negative information and shall make no mention of the filing of this complaint or Cornell's underlying charge of discrimination to prospective employers.

14. The terms of this Decree shall be binding upon Linda's Construction, and its present and future representatives, agents, officers, employees, servants, successors, and assigns, as to the

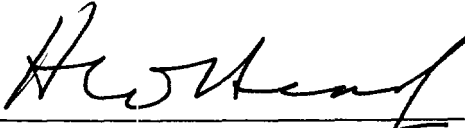
issues resolved herein.

15. The parties to this Decree shall bear their own costs and attorneys' fees incurred in this action. The parties further agree that pursuant to Section 706(k) of Title VII, 42 U.S.C. § 2000e-5(k), there is no "prevailing party" in this action or proceeding.

The Clerk shall furnish a copy hereof to each attorney of record.

SO ORDERED.

Signed this 30 day of May, 2002.


HAYDEN W. HEAD, JR.
United States District Judge

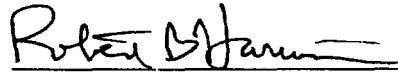
Respectfully Submitted,

GWENDOLYN YOUNG REAMS
Associate General Counsel

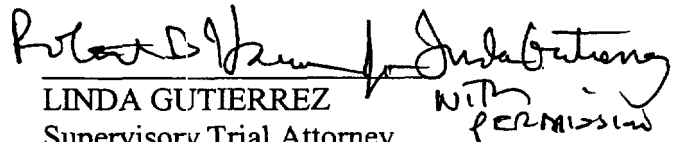


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COMMISSION

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ATTORNEYS FOR PLAINTIFF

NOTICE TO ALL EMPLOYEES

LINDA'S CONSTRUCTION, INC., IS FIRMLY COMMITTED TO TREATING EMPLOYEES AND APPLICANTS FOR EMPLOYMENT ACCORDING TO MERIT WITHOUT REGARD TO THEIR RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, OR FOR HAVING ENGAGED IN ACTIVITY PROTECTED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED. THIS POLICY APPLIES TO ALL EMPLOYMENT DECISIONS, INCLUDING RECRUITMENT, RETENTION, PROMOTION, TRANSFER, LAYOFF AND/OR TERMINATION, AND ALL OTHER TERMS AND CONDITIONS OF EMPLOYMENT. LINDA'S CONSTRUCTION, INC., WILL SPECIFICALLY NOT TOLERATE RACIAL HARASSMENT IN THE FORM OF RACIAL SLURS, NAME-CALLING OR JOKING AMONG EMPLOYEES.

IF YOU BELIEVE YOU ARE BEING DISCRIMINATED AGAINST IN ANY TERM OR CONDITION OF YOUR EMPLOYMENT BECAUSE OF YOUR RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, AGE, OR DISABILITY, OR THAT YOU ARE BEING SUBJECTED TO HARASSMENT BECAUSE OF YOUR RACE OR FOR HAVING ENGAGED IN TITLE VII-PROTECTED ACTIVITY, YOU ARE ENCOURAGED TO SEEK ASSISTANCE FROM SUPERVISORY PERSONNEL, OR FROM THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, 5410 FREDERICKSBURG ROAD, SUITE 200, SAN ANTONIO, TEXAS 78229-3550, (210) 281-7600 OR 1-800-669-4000.

NO RETALIATORY ACTION MAY BE TAKEN AGAINST YOU FOR SEEKING ASSISTANCE, FILING A CHARGE, OR COMMUNICATING WITH THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

EEOC ENFORCES TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, WHICH PROHIBITS EMPLOYMENT DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN; THE AGE DISCRIMINATION IN EMPLOYMENT ACT; THE EQUAL PAY ACT; PROHIBITIONS AGAINST DISCRIMINATION AFFECTING INDIVIDUALS WITH DISABILITIES; SECTIONS OF THE CIVIL RIGHTS ACT OF 1991, AND TITLE I OF THE AMERICANS WITH DISABILITIES ACT, WHICH PROHIBITS DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES IN THE PRIVATE SECTOR AND STATE AND LOCAL GOVERNMENTS.

EXHIBIT "A"